

GERARD C. RICKHOFF



DONNA KAY MCKINNEY

COUNTY CLERK & DISTRICT CLERK  
COURT RECORDS SEARCH

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Case #2017CI13662

**Name:**

**Date Filed** : 07/27/2017

**Case Status** : PENDING

**Litigant Type** : PLAINTIFF

**Court** : 045

**Docket Type** : INSURANCE

**Business Name** : GRANT FOOD MART INC

**Style** : GRANT FOOD MART INC

**Style (2)** : vs CRUM & FORSTER INDEMNITY COMPANY ET AL

GERARD C. RICKHOFF



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Case #2017CI13662

Name:

Date Filed : 07/27/2017

Case Status : PENDING

Litigant Type : DEFENDANT

Court : 045

Docket Type : INSURANCE

Business Name : CRUM & FORSTER INDEMNITY COMPANY

Style : GRANT FOOD MART INC

Style (2) : vs CRUM & FORSTER INDEMNITY COMPANY ET AL

GERARD C. RICKHOFF



DONNA KAY MCKINNEY

## COUNTY CLERK & DISTRICT CLERK COURT RECORDS SEARCH

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# Case #2017CI13662

**Name:** DAVID ELTON KLAUS

**Date Filed** : 07/27/2017

**Case Status** : PENDING

**Litigant Type** : DEFENDANT

**Court** : 045

**Docket Type** : INSURANCE

**Business Name** :

**Style** : GRANT FOOD MART INC

**Style (2)** : vs CRUM & FORSTER INDEMNITY COMPANY ET AL

# Case History

Currently viewing 1 through 10 of 10 records

Sequence	Date Filed	Description
P00008	8/28/2017	EMAILED COPY OF: ALL PLEADINGS TO; THOMPSON COE
P00007	8/28/2017	REQUEST FOR LETTER REQUESTING COPIES
P00006	8/24/2017	ORIGINAL ANSWER OF DAVID ELTON KLAUS
P00005	8/24/2017	ORIGINAL ANSWER OF CRUM & FORSTER INDEMNITY COMPANY
S00002	7/28/2017	CITATION CERTIFIED MAIL DAVID ELTON KLAUS ISSUED: 7/28/2017 RECEIVED: 7/28/2017 RETURNED: 8/7/2017
S00001	7/28/2017	CITATION CERTIFIED MAIL CRUM & FORSTER INDEMNITY COMPANY ISSUED: 7/28/2017 RECEIVED: 7/28/2017 EXECUTED: 8/4/2017 RETURNED: 8/7/2017
P00004	7/27/2017	JURY FEE PAID
P00003	7/27/2017	SERVICE ASSIGNED TO CLERK 1
P00002	7/27/2017	CIVIL CASE INFORMATION SHEET
P00001	7/27/2017	PET FOR HAIL DAMAGE COMMERCIAL WJD

CAUSE NO. **2017CI13662**

GRANT FOOD MART, INC.

Plaintiff,

VS.

CRUM & FORSTER INDEMNITY COMPANY  
and DAVID ELTON KLAUS

Defendants.

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§  
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§  
§  
§  
§

IN THE DISTRICT COURT

**45** JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, GRANT FOOD MART, INC., files this Original Petition against Defendants CRUM & FORSTER INDEMNITY COMPANY ("Crum & Forster") and DAVID ELTON KLAUS ("Adjuster") and for causes of action would respectfully show the Court the following:

**I. DISCOVERY LEVEL**

Pursuant to rule 190 of the Texas Rules of Civil Procedure, Plaintiff intends to conduct discovery under Level 3.

**II. VENUE**

Venue is appropriate in Bexar County, Texas because all or part of the conduct giving rise to the causes of action were committed in Bexar County, Texas and the Plaintiff and property which is the subject of this suit are located in Bexar County, Texas.

**III. PARTIES**

Plaintiff resides in Bexar County, Texas.

Defendant Crum & Forster is in the business of insurance in the State of Texas. The insurance business done by Crum & Forster in Texas includes, but is not limited to, the following:

- The making and issuing of contracts of insurance with the Plaintiff;

- The taking or receiving of application for insurance, including the Plaintiff's application for insurance;
- The receiving or collection of premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof, including any such consideration or payments from the Plaintiff; and
- The issuance or delivery of contracts of insurance to residents of this state or a person authorized to do business in this state, including the Plaintiff.

Defendant, CRUM & FORSTER INDEMNITY COMPANY may be cited with process by serving its attorney for service by *Certified Mail Return Receipt Requested*, Mike Hicks Regional Claims Manger, 2400 Lakeside Boulevard, Suite 200, Richardson Texas 75082-4341.

Defendant, DAVID ELTON KLAUS, is an Adjuster engaged in the business of insurance in Texas and he may be cited with process at by *Certified Mail Return Receipt Requested*, at his last known business address registered with the Texas Department of Insurance, 4676 Ranch Road 32, Blanco, Texas 78606-4413.

#### **IV. NATURE OF THE CASE; RELIEF SOUGHT**

This is a first-party insurance case stemming from extensive damage to Plaintiff's Property. Plaintiff seeks damages for breach of contract, violations of the Texas Insurance Code, and common law bad faith. Plaintiff also seeks attorney's fees, statutory penalties, costs of court and pre- and post-judgment interest. As required by Rule 47 of the Texas Rules of Civil Procedure, Plaintiff seeks monetary over \$1,000,000.

#### **V. BACKGROUND FACTS**

Grant Food Mart, Inc. own property located at 8755 IH 10 East, Converse, Texas 78109 (the "Property"). The Property is covered by a policy, numbered 5068836657, of insurance which the Defendant sold to Plaintiff (the "Policy"). The Policy covered the Property against loss by hail, wind and water, among other perils.

As a consequence of a storm on or about April 12, 2016, the Property sustained extensive damage.

Plaintiff has performed all conditions precedent to his recovery under the Policy.

Plaintiff gave timely notice to the carrier.

The carrier assigned the claim to David Elton Klaus, among others, to investigate, report on and adjust the loss.

Plaintiff provided information to the Adjuster and opportunities for the Adjuster to inspect the home.

The Insurance Defendant and Adjuster have failed and refused to pay Plaintiff in accordance with its promises under the Policy.

Plaintiff has suffered property damage which has not been paid, even though the amounts are well-established and have been provided to the Insurance defendant and the Adjuster.

The Insurance Defendant has failed to make an attempt to settle Plaintiff's claim in a fair manner, although its liability to the Plaintiff under the Policy is without dispute. This conduct is a violation of Tex. Ins. Code Sec. 541.060(a)(2)(A).

The Insurance Defendant and the Adjuster have failed to explain the reasons for its offer of an inadequate compensation. The Insurance Defendant and the Adjuster have failed to offer Plaintiff adequate compensation without any explanation why full payment was not being made. The Insurance Defendant and Adjuster did not communicate that any future settlements or payments would be forthcoming to pay the entire losses covered under the Policy. This conduct violates Tex. Ins. Code Sec. 541.060(a)(3).

The Insurance Defendant and the Adjuster have failed to affirm or deny coverage within a reasonable time. Plaintiff did not receive timely indication of acceptance or rejection regarding the

full and entire claim in writing from the Insurance Defendant or the Adjuster in a timely manner. This conduct is a violation of Tex. Ins. Code Sec. 541.060(a)(4).

The Insurance Defendant refused to fully compensate Plaintiff under the terms of the Policy even though the Insurance Defendant failed to conduct a reasonable investigation. The Insurance Defendant and the Adjuster performed a result-oriented investigation of Plaintiff's claim which resulted in an unfair, biased and inequitable evaluation of Plaintiff's losses. This conduct is a violation of Tex. Ins. Code Sec. 541.060(a)(7).

The Insurance Defendant and the Adjuster failed to meet their obligations under the Texas Insurance Code regarding timely acknowledging Plaintiff's claim, beginning investigation of Plaintiff's claim, and requesting all information reasonably necessary to investigate Plaintiff's claim within the time period mandated by statute. This conduct is a violation of Tex. Ins. Code Sec. 542.055.

The Insurance Defendant and the Adjuster failed to accept or deny Plaintiff's full and entire claim within the time period mandated by statute. This conduct is a violation of Tex. Ins. Code Sec. 542.056.

The Insurance Defendant and the Adjuster forced Plaintiff to file this suit by offering substantially less than the amount of covered damages. This conduct violates Texas Insurance Code § 542.003(b)(5) and 28 TAC § 21.203(5).

The Insurance Defendant failed to meet its obligation under the Texas Insurance Code regarding payment of the claim without delay. This conduct is a violation of Tex. Ins. Code Sec. 542.058.



## VI. CLAIMS AGAINST CRUM & FORSTER INDEMNITY COMPANY

**Declaratory Judgment.** Plaintiff re-alleges the foregoing paragraphs. Pursuant to the Texas Declaratory Judgment Act, Plaintiff is entitled to a declaration that the Policy provides coverage for the cost to repair the damaged property, less only a deductible, among other things. In the alternative, Plaintiff asserts that the Policy is ambiguous and must be interpreted in favor of coverage and against the Insurance Defendant.

**Breach of Contract.** Plaintiff re-alleges the foregoing paragraphs. The acts and omissions of the Defendant and its agents constitute a breach and/or anticipatory breach of the Defendant's contract with Plaintiff. Plaintiff has satisfied all conditions precedent to the fulfillment of its contractual demands. Accordingly, additionally or in the alternative, Plaintiff brings an action for breach of contract against the Defendant pursuant to Texas statutory and common law, including Chapter 38 of the Texas Civil Practice and Remedies Code, and seek all of its damages for such breach, including actual damages, consequential damages, attorneys' fees, prejudgment interest, other litigation expenses and costs of court.

**Violations of the Texas Insurance Code.** Plaintiff re-alleges the foregoing paragraphs. At all pertinent times, Defendant was engaged in the business of insurance as defined by the Texas Insurance Code. The acts and omissions of Crum & Forster and its agents constitute one or more violations of the Texas Insurance Code. More specifically, Crum & Forster has, among other violations, violated the following provisions of the Code:

1. Insurance Code chapter 542, the Prompt Payment Act.
2. Insurance Code § 542.003(b)(5) and 28 TAC § 21.203(5).
3. Insurance Code chapter 541, section 541.060 by, among other things:
  - failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which his liability has become reasonably clear;

- refusing to affirm or deny coverage within a reasonable time; and/or
- refusing to pay Plaintiff's claim without conducting a reasonable investigation.

Where statements were made by the Defendant, Plaintiff reasonably relied upon them. As a result of the foregoing conduct, which was and is the producing cause(s) of injury and damage to Plaintiff, Plaintiff has suffered damages including, without limitation, actual damages, economic damages, and consequential damages. Moreover, one or more of the foregoing acts or omissions were "knowingly" made, entitling Plaintiff to seek treble damages pursuant to the Insurance Code. The Defendant has also violated the Prompt Payment Act, and Plaintiff seeks 18% damages as a penalty, plus reasonable and necessary attorney's fees incurred as a result of these violations.

**"Common Law Bad Faith."** Plaintiff re-alleges the foregoing paragraphs. The Defendant has refused to pay or delayed in paying a claim after liability has become reasonably clear. The Defendant has refused to pay, delayed in paying or offered grossly inadequate and unconscionable sums to settle the claims submitted by Plaintiff. This constitutes a breach of its common law duty of good faith and fair dealing' *i.e.*, it is acting in "bad faith."

Moreover, the Defendant has "investigated" and "adjusted" Plaintiff's claim in a malicious, intentional, fraudulent and/or grossly negligent fashion, and Plaintiff are entitled to extra-contractual damages, including exemplary damages. Plaintiff has sustained serious damage to his property as a result of the Defendant's refusal to honor the Policy. The Defendant is well aware that its actions involve an extreme risk that Plaintiff will suffer financial damage as a result of its refusal to honor its obligations, yet it is consciously indifferent to Plaintiff's rights. Plaintiff is entitled to recover its actual damages, consequential damages, punitive damages, and pre- and post-judgment interest.

**Attorney's fees.** Plaintiff re-alleges the foregoing paragraphs. Plaintiff has been required to engage the services of the undersigned attorneys and have agreed to pay his attorneys a reasonable fee for services expended and to be expended in the prosecution of his claims against the Defendant through the trial court and all levels of the appellate process. Plaintiff seeks the recovery of all of his attorney's fees and expenses.

With respect to all causes of action asserted herein, Plaintiff seeks the recovery of prejudgment and post-judgment interest.

## **VII. CLAIMS AGAINST DAVID ELTON KLAUS**

**Violations of the Texas Insurance Code.** Plaintiff re-alleges the foregoing paragraphs. At all pertinent times, the Adjuster, David Elton Klaus was engaged in the business of insurance as defined by the Texas Insurance Code. The acts and omissions of Klaus constitute one or more violations of the Texas Insurance Code. More specifically, Klaus has violated the Texas Insurance Code chapter 541, section 541.060 by, among other things:

- failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which their liability has become reasonably clear;
- refusing to pay Plaintiff's claim without conducting a reasonable investigation.

The Insurance Defendant assigned the loss and the claim to Klaus who was at all pertinent times the agent of the Insurance Defendant, through both actual and apparent authority. The acts, representations and omissions of the Adjuster are attributed to the Insurance Defendant.

Despite having been assigned the claim, and despite being given authority and instructions to inspect, adjust and evaluate the claim, Klaus failed and refused to adjust the claim properly. Klaus failed to inspect the property and the damages, failed to request information, failed to fully investigate the claim, failed to respond to requests for information from Plaintiff, failed to timely

evaluate the claim, failed to timely estimate the claim, and, failed to timely and properly report to the Insurance Defendant and make recommendations to the Insurance Defendant.

Plaintiff provided information regarding the loss and the claim to Klaus. Plaintiff allowed Klaus full and complete access to the Property. Plaintiff provided sufficient information to Klaus to adjust and evaluate the loss. Plaintiff made inquiries regarding the status of the loss and payment. Klaus failed and refused to respond to the inquiries and failed to properly adjust the claim and the loss. As a result, to this date, Plaintiff has not received full payment for the claim. Klaus' actions were negligent, reckless, willful and intentional, and were the proximate and producing cause of damages to the Insured.

Where statements were made by Klaus Plaintiff reasonably relied upon them. As a result of the foregoing conduct, which was and is the producing cause(s) of injury and damage to Plaintiff, Plaintiff has suffered damages including, without limitation, actual damages, economic damages, and consequential damages. Moreover, one or more of the foregoing acts or omissions were "knowingly" made, entitling Plaintiff to seek treble damages pursuant to the Insurance Code.

Specifically, upon information and belief, Crum & Forster relied solely on Klaus to coordinate and oversee the investigation into Plaintiff's claim. Therefore the unreasonable investigation performed by Klaus is attributable to Crum & Forster.

**Attorney's fees.** Plaintiff re-alleges the foregoing paragraphs. Plaintiff has been required to engage the services of the undersigned attorneys and have agreed to pay his attorneys a reasonable fee for services expended and to be expended in the prosecution of his claims against the Insurance Defendant through the trial court and all levels of the appellate process. Plaintiff seeks the recovery of all of his attorney's fees and expenses.

With respect to all causes of action asserted herein, Plaintiff seeks the recovery of prejudgment and post-judgment interest.

#### **VIII. CONDITIONS PRECEDENT**

All conditions precedent for Plaintiff to recover under the Policy have been or will be met.

#### **IX. JURY DEMAND**

Plaintiff requests that a jury be convened to try the factual issues in this action.

#### **X. REQUEST FOR DISCLOSURE**

Pursuant to the Texas Rules of Civil Procedure 194, Plaintiff requests that Defendants provide the information required in a Request for Disclosure.

#### **XI. REQUEST FOR PRODUCTION TO CRUM & FORSTER INDEMNITY COMPANY**

Please produce Crum & Forster's complete claim file for Grant Food Mart, Inc. relating to or arising out of any damage which occurred to the Property.

Please produce all emails, notes, and other forms of communication between Crum & Forster, its agents, Adjusters, employees, or representatives relating to, mentioning, concerning or evidencing the Property which is the subject of this suit.

Please produce a complete copy of Crum & Forster's underwriting file for the Property.

#### **XII. REQUEST FOR PRODUCTION TO DAVID ELTON KLAUS**

Please produce David Elton Klaus' complete claim or adjusting file for the Property relating to or arising out of any damage which occurred.

Please produce all emails, notes, and other forms of communication between David Elton Klaus, and any consultants, engineers, contractors or any other entity that assisted Klaus in the investigation, adjustment or evaluation the Property which is the subject of this suit.

### **XIII. PRAYER**

WHEREFORE, Plaintiff seeks the following relief:

A. The Court's declaration that the Policy provides coverage for the damage to the home, less only a deductible;

B. Alternatively, a ruling that the Policy is ambiguous and must be interpreted in favor of coverage and in favor of Plaintiff;

C. Damages against the Insurance Defendant for breach of contract, including actual damages, consequential damages, attorneys' fees, pre- and post-judgment interest, other litigation expenses and costs of court;

D. Penalty in the amount of 18% damages for violations of the Prompt Payment Act;

E. Damages against the Insurance Defendant and Adjuster, jointly and severally, for other violations of the Texas Insurance Code, including without limitation economic damages, actual damages, consequential damages, treble damages, and reasonable and necessary attorneys' fees;

F. Damages against the Insurance Defendant and the Adjuster, jointly and severally, for breach of the duty of good faith and fair dealing, including actual damages, consequential damages, punitive damages and pre- and post-judgment interest; and

G. Plaintiff also seeks all other financial relief and rulings to which they may be legally or equitably entitled.

*[Signature Follows]*

Respectfully submitted,

A handwritten signature in black ink that reads "Marc Gravely". The signature is written in a cursive, flowing style.

---

MARC E. GRAVELY  
State Bar No. 00787582  
[mgravely@gplawfirm.com](mailto:mgravely@gplawfirm.com)  
JONATHAN C. LIENBY  
State Bar No. 24072889  
[jlienby@gplawfirm.com](mailto:jlienby@gplawfirm.com)  
GRAVELY & PEARSON, L.L.P.  
425 Soledad, Suite 600  
San Antonio, Texas 78205  
Telephone: (210) 472-1111  
Facsimile: (210) 472-1110

**ATTORNEYS FOR PLAINTIFF**

FILED

7/27/2017 10:45 AM

Donna Kay McKinney

## CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY):

2017CI13662

COURT (FOR CLERK USE ONLY):

45

Bexar County District Clerk

Accepted By: STYLED Grant Food Mart, Inc. v. Crum & Forster Indemnity Company and David Elton Klaus

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

<b>1. Contact information for person completing case information sheet:</b> Name: <u>Marc Gravely</u> Email: <u>mgravely@gplawfirm.com</u> Address: <u>425 Soledad, Suite 600</u> Telephone: <u>210-472-1111</u> City/State/Zip: <u>San Antonio, Texas 78205</u> Fax: <u>210-472-1110</u> Signature: <u>Marc Gravely</u> State Bar No: <u>00787582</u>		<b>Names of parties in case:</b> Plaintiff(s)/Petitioner(s): <u>Grant Food Mart</u> Defendant(s)/Respondent(s): <u>Crum &amp; Forster Indemnity Company</u> <u>David Elton Klaus</u> [Attach additional page as necessary to list all parties]		<b>Person or entity completing sheet is:</b> <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____					
<b>2. Indicate case type, or identify the most important issue in the case (select only 1):</b>									
<b>Civil</b>			<b>Family Law</b>						
<b>Contract</b> <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ <b>Foreclosure</b> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____		<b>Injury or Damage</b> <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <b>Malpractice</b> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <b>Product Liability</b> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____		<b>Real Property</b> <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____		<b>Marriage Relationship</b> <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <b>Divorce</b> <input type="checkbox"/> With Children <input type="checkbox"/> No Children <b>Other Family Law</b> <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____		<b>Post-judgment Actions (non-Title IV-D)</b> <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order <b>Parent-Child Relationship</b> <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
<b>Employment</b> <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____		<b>Other Civil</b> <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____							
<b>Tax</b> <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		<b>Probate &amp; Mental Health</b> <b>Probate/Wills/Intestate Administration</b> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____							
<b>3. Indicate procedure or remedy, if applicable (may select more than 1):</b>									
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover					
<b>4. Indicate damages sought (do not select if it is a family law case):</b>									
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input checked="" type="checkbox"/> Over \$1,000,000									



CERTIFIED MAIL #70162070000075204061



2017CI13662 S00001

Case Number: 2017-CI-13662

**GRANT FOOD MART INC**

**vs.**

**CRUM & FORSTER INDEMNITY COMPANY ET AL**

(Note: Attached document may contain additional litigants).

IN THE DISTRICT COURT  
45th JUDICIAL DISTRICT  
BEXAR COUNTY, TEXAS

**CITATION**

**"THE STATE OF TEXAS"**

**DIRECTED TO:** CRUM & FORSTER INDEMNITY COMPANY  
BY SERVING ITS ATTORNEY MIKE HICKS REGIONAL CLAIMS MANAGER

2400 LAKESIDE BOULEVARD 200  
RICHARDSON TX 75082

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this CITATION and ORIGINAL PETITION, a default judgment may be taken against you." Said CITATION with ORIGINAL PETITION was filed on the 27th day of July, 2017.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 28TH DAY OF July A.D., 2017.

MARC E GRAVELY  
ATTORNEY FOR PLAINTIFF  
425 SOLEDAD ST 600  
SAN ANTONIO, TX 78205



**Donna Kay McKinney**  
Bexar County District Clerk  
101 W. Nueva, Suite 217  
San Antonio, Texas 78205

By: *Larry Botello*, Deputy

*mo 7-28-17*  
GRANT FOOD MART INC  
vs  
CRUM & FORSTER INDEMNITY COMPANY ET AL

**Officer's Return**

Case Number: 2017-CI-13662  
Court: 45th Judicial District Court

Came to hand on the 28th day of July 2017, A.D., at 2:52 o'clock P.M. and EXECUTED (NOT EXECUTED) by CERTIFIED MAIL, on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by delivering to: \_\_\_\_\_ at 2400 LAKESIDE BOULEVARD 200 RICHARDSON TX 75082 a true copy of this Citation, upon which I endorsed that date of delivery, together with the accompanying copy of the CITATION with ORIGINAL PETITION.

Cause of failure to execute this Citation is \_\_\_\_\_.

**Donna Kay McKinney**  
Clerk of the District Courts of  
Bexar County, TX  
By: *Larry Botello*, Deputy

CERTIFIED MAIL #70162070000075204023



2017CI13662 S00002

Case Number: 2017-CI-13662

**GRANT FOOD MART INC**

**vs.**

**CRUM & FORSTER INDEMNITY COMPANY ET AL**

(Note: Attached document may contain additional litigants).

IN THE DISTRICT COURT  
45th JUDICIAL DISTRICT  
BEXAR COUNTY, TEXAS

**CITATION**

**"THE STATE OF TEXAS"**

**DIRECTED TO:** DAVID ELTON KLAUS

4676 RANCH RD 32  
BLANCO TX 78606

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this CITATION and ORIGINAL PETITION, a default judgment may be taken against you." Said CITATION with ORIGINAL PETITION, was filed on the 27th day of July, 2017.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 28TH DAY OF July A.D., 2017.

MARC E GRAVELY  
ATTORNEY FOR PLAINTIFF  
425 SOLEDAD ST 600  
SAN ANTONIO, TX 78205



**Donna Kay McKinney**  
Bexar County District Clerk  
101 W. Nueva, Suite 217  
San Antonio, Texas 78205

By: *Larry Botello*, Deputy

*mo 7-28-17*

GRANT FOOD MART INC  
vs  
CRUM & FORSTER INDEMNITY COMPANY ET AL

**Officer's Return**

Case Number: 2017-CI-13662  
Court: 45th Judicial District Court

Came to hand on the 28th day of July 2017, A.D., at 1:20 o'clock P.M. and EXECUTED (NOT EXECUTED) by CERTIFIED MAIL, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by delivering to: \_\_\_\_\_ at 4676 RANCH RD 32 BLANCO TX 78606 a true copy of this Citation, upon which I endorsed that date of delivery, together with the accompanying copy of the CITATION with ORIGINAL PETITION.

Cause of failure to execute this Citation is \_\_\_\_\_.

**Donna Kay McKinney**  
Clerk of the District Courts of  
Bexar County, TX  
By: *Larry Botello*, Deputy

FILE COPY (DK003)

DOCUMENT SCANNED AS FILED

CERTIFIED MAIL #70162070000075204061



2017CI13662 590001

Case Number: 2017-CI-13662

GRANT FOOD MART INC

vs.

CRUM &amp; FORSTER INDEMNITY COMPANY ET AL

(Note: Attached document may contain additional litigants).

## CITATION

CRT

IN THE DISTRICT COURT  
45th JUDICIAL DISTRICT  
BEXAR COUNTY, TEXAS

"THE STATE OF TEXAS"

DIRECTED TO: CRUM & FORSTER INDEMNITY COMPANY  
BY SERVING ITS ATTORNEY MIKE HICKS REGIONAL CLAIMS MANAGER2400 LAKESIDE BOULEVARD 200  
RICHARDSON TX 75082

**FILED**  
2 O'CLOCK 44 PM  
AUG 7 2017  
DONNA KAY  
District Clerk, Bexar County  
By: *Larry Botello* / *Donna*

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this CITATION and ORIGINAL PETITION, a default judgment may be taken against you." Said CITATION with ORIGINAL PETITION was filed on the 27th day of July, 2017.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 28TH DAY OF July A.D., 2017.

MARC E GRAVELY  
ATTORNEY FOR PLAINTIFF  
425 SOLEDAD ST 600  
SAN ANTONIO, TX 78205



Donna Kay McKinney  
Bexar County District Clerk  
101 W. Nueva, Suite 217  
San Antonio, Texas 78205

By: *Larry Botello*, Deputy

GRANT FOOD MART INC  
vs  
CRUM & FORSTER INDEMNITY COMPANY ET AL

## Officer's Return

Case Number: 2017-CI-13662  
Court: 45th Judicial District Court

Came to hand on the 28th day of July 2017, A.D., at 2:52 o'clock P.M. and EXECUTED (NOT EXECUTED) by CERTIFIED MAIL, on the 4th day of Aug 2017, by delivering to: *Brandon Walton* at 2400 LAKESIDE BOULEVARD 200 RICHARDSON TX 75082 a true copy of this Citation, upon which I endorsed that date of delivery, together with the accompanying copy of the CITATION with ORIGINAL PETITION.

Cause of failure to execute this Citation is \_\_\_\_\_

Donna Kay McKinney  
Clerk of the District Courts of  
Bexar County, TX  
By: *Larry Botello*, Deputy

7016 2070 0000 7520 4061

**U.S. Postal Service™**  
**CERTIFIED MAIL® RECEIPT**  
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**OFFICIAL USE**

Certified Mail Fee

\$

Extra Services & Fees (check box, add fees as appropriate)

☐ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage

\$

To

\$

By

For

At

City

CRUM & FORSTER INDEMNITY COMPANY  
 BY SERVING ITS ATTORNEY MIKE HICKS REGIC  
 2400 LAKESIDE BOULEVARD, 200  
 RICHARDSON, TX 75082

2017C113662 7/28/2017 CITCM LARRY BOTELLO

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

CRUM & FORSTER INDEMNITY COMPANY  
 BY SERVING ITS ATTORNEY MIKE HICKS REGIONAL  
 2400 LAKESIDE BOULEVARD 2000  
 RICHARDSON, TX 75082

2017C113652 - 7/28/2017 CITCM LARRY BOTELLO



9590 9402 1534 5362 0675 69

**2. Article Number (Transfer from service label)**

7016 2070 0000 7520 4061

**COMPLETE THIS SECTION ON DELIVERY****A. Signature**

x *[Signature]*

- ☐ Agent  
☐ Addressee

**B. Received by (Printed Name)**

*Brandi Warton*

**C. Date of Delivery**

- ☐ Is delivery address different from item 1? ☐ Yes  
 delivery address below: ☐ No

**3. Service Type**

- ☐ Adult Signature  
☐ Adult Signature Restricted Delivery  
☐ Certified Mail®  
☐ Certified Mail Restricted Delivery  
☐ Collect on Delivery  
☐ Collect on Delivery Restricted Delivery  
☐ Insured Mail

- ☐ Priority Mail Express®  
☐ Registered Mail™  
☐ Registered Mail Restricted Delivery  
☐ Return Receipt for Merchandise  
☐ Signature Confirmation™  
☐ Signature Confirmation Restricted Delivery

Mail Restricted Delivery  
 0)

PS Form 3811, July 2015 PSN 7530-02-000-9003

DOCUMENT SCANNED AS FILED

Domestic Return Receipt

USPS TRACKING #



9590 9402 1534 5362 0675 69



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Donna Kay McKinney  
Bexar County District Clerk  
101 W. Nueva, Suite 217  
San Antonio, TX 78203

*Handwritten:* 7/14/17  
DEPUTY  
2017 AUG - 7 P 2:44  
DONNA KAY MCKINNEY  
DISTRICT CLERK  
BEXAR COUNTY



CERTIFIED MAIL #70162070000075204023



2017CI13662 S00002

Case Number: 2017-CI-13662

GRANT FOOD MART INC

vs.

CRUM &amp; FORSTER INDEMNITY COMPANY ET AL

(Note: Attached document may contain additional litigants).

## CITATION

CRT

IN THE DISTRICT COURT  
45th JUDICIAL DISTRICT  
BEXAR COUNTY, TEXAS

"THE STATE OF TEXAS"

DIRECTED TO: DAVID ELTON KLAUS

4676 RANCH RD 32  
BLANCO TX 78606

10 FILED  
O'CLOCK B.A.M.  
AUG 7 2017  
DONNA K. MCKINNEY  
District Clerk  
BEXAR COUNTY, Texas  
BY: *[Signature]*

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this CITATION and ORIGINAL PETITION, a default judgment may be taken against you." Said CITATION with ORIGINAL PETITION was filed on the 27th day of July, 2017.

ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 28TH DAY OF July A.D., 2017.

MARC E GRAVELY  
ATTORNEY FOR PLAINTIFF  
425 SOLEDAD ST 600  
SAN ANTONIO, TX 78205



Donna Kay McKinney  
Bexar County District Clerk  
101 W. Nueva, Suite 217  
San Antonio, Texas 78205

By: *Larry Botello*, Deputy

GRANT FOOD MART INC  
vs  
CRUM & FORSTER INDEMNITY COMPANY ET AL

## Officer's Return

Case Number: 2017-CI-13662  
Court: 45th Judicial District Court

Came to hand on the 28th day of July 2017, A.D., at 1:20 o'clock P.M. and EXECUTED (NOT EXECUTED) by CERTIFIED MAIL, on the 10 day of July, by delivering to: David Klaus at 4676 RANCH RD 32 BLANCO TX 78606 a true copy of this Citation, upon which I endorsed that date of delivery, together with the accompanying copy of the CITATION with ORIGINAL PETITION.

Cause of failure to execute this Citation is \_\_\_\_\_

Donna Kay McKinney  
Clerk of the District Courts of  
Bexar County, TX  
By: *Larry Botello*, Deputy

RETURN TO COURT (DK003)

DOCUMENT SCANNED AS FILED

70216 2070 0000 7520 4023

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Extra Services & Fees (check box, add fee as appropriate)

☐ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage \$

**Total** \$ DAVID ELTON KLAUS

**Sent** \$ 4676 RANCH RD 32

**Street** BLANCO, TX 78606

**City** 2017C113662 7/28/2017 CITCM LARRY BOTELLO

PS Form 3800, April 2015 PSN 7530-02-000-8047 See Reverse for Instructions

ARSENAL STA. 78204  
 AUG 01 2017  
 Postmark Here



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

**ELTON KLAUS**  
**4678 RANCH RD 32**  
**BERNARD, TX 78606**

**COMPLETE THIS SECTION ON DELIVERY**

## A. Signature

**X** *David Klaus*

☐ Agent☐ Addressee

## B. Received by (Printed Name)

*David Klaus*

## C. Date of Delivery

## D. Is delivery address different from item 1?

☐ Yes

If delivery address below:

☐ No

2017C113052 7/28/2017 CITCM LARRY BOTELLO



9590 9402 1534 5362 0675 83

## 2. Article Number (Transfer from service label)

7016 2070 0000 7520 4023

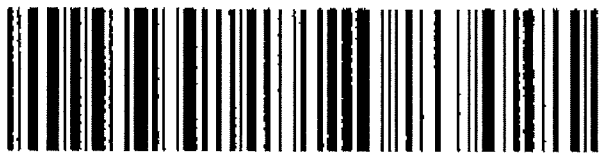
## 3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Mail Restricted Delivery (DD)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2011 PSN 7530-02-000-9009 **DOCUMENT SCANNED AS FILED** Domestic Return Receipt

USPS TRACKING #



9590 9402 1534 5362 0675 83



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box •

Donna Kay M<sup>s</sup>Kinney  
Bexar County District Clerk  
101 W. Nueva, Suite 217  
San Antonio, TX 78205

BY 7 DEPUTY A 10 13  
2017 AUG - 7  
DONNA KAY MCKINNEY  
DISTRICT CLERK  
BEXAR COUNTY



FILED  
8/24/2017 11:25 AM  
Donna Kay McKinney  
Bexar County District Clerk  
Accepted By: Isaias Ibarra

CAUSE NO. 2017CI13662

<p><b>GRANT FOOD MART, INC.</b></p> <p><i>Plaintiff,</i></p> <p><b>v.</b></p> <p><b>CRUM &amp; FORSTER INDEMNITY COMPANY AND DAVID ELTON KLAUS</b></p> <p><i>Defendants.</i></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p><b>IN THE DISTRICT COURT OF</b></p> <p><b>BEXAR COUNTY, TEXAS</b></p> <p><b>45TH JUDICIAL DISTRICT</b></p>
--	--	---

---

**DEFENDANT CRUM & FORSTER INDEMNITY COMPANY'S  
ORIGINAL ANSWER**

---

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Crum & Forster Indemnity Company ("Defendant" or "Crum & Forster") and files its Original Answer and would respectfully show as follows:

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies each and every, all and singular, the allegations contained within Plaintiff's Original Petition and demands strict proof thereon by a preponderance of the credible evidence in accordance with the Constitution and laws of the State of Texas.

WHEREFORE, PREMISES CONSIDERED, Defendant Crum & Forster Indemnity Company prays upon final trial and hearing, that Plaintiff recover nothing from Defendant and for such other such further relief, both general and special, to which Defendant may be justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/ Christopher H. Avery

Rodrigo "Diego" Garcia

State Bar No. 00793778

Email: [dgarcia@thompsoncoe.com](mailto:dgarcia@thompsoncoe.com)

Christopher H. Avery  
State Bar No. 24069321  
Email: [cavery@thompsoncoe.com](mailto:cavery@thompsoncoe.com)  
One Riverway, Suite 1400  
Houston, Texas 77056  
Telephone: (713) 403-8388  
Facsimile: (713) 403-8299

COUNSEL FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 24<sup>th</sup> day of August 2017, a true and correct copy of this document was served on all known counsel of record in accordance with the Texas Rules of Civil Procedure.

Marc E. Gravely  
[mgravely@gplawfirm.com](mailto:mgravely@gplawfirm.com)  
Jonathan C. Lisenby  
[jlisenby@gplawfirm.com](mailto:jlisenby@gplawfirm.com)  
GRAVELY & PEARSON, LLP  
425 Soledad, Suite 600  
San Antonio, Texas 78205

/s/ Christopher H. Avery  
Christopher H. Avery

FILED  
8/24/2017 11:25 AM  
Donna Kay McKinney  
Bexar County District Clerk  
Accepted By: Isaias Ibarra

**CAUSE NO. 2017CI13662**

<b>GRANT FOOD MART, INC.</b>	§	<b>IN THE DISTRICT COURT OF</b>
	§	
<i>Plaintiff,</i>	§	
	§	
<b>v.</b>	§	<b>BEXAR COUNTY, TEXAS</b>
	§	
	§	
<b>CRUM &amp; FORSTER INDEMNITY</b>	§	
<b>COMPANY AND DAVID ELTON KLAUS</b>	§	
	§	
<i>Defendants.</i>	§	<b>45TH JUDICIAL DISTRICT</b>

---

---

**DEFENDANT DAVID ELTON KLAUS'S ORIGINAL ANSWER**

---

---

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, DAVID ELTON KLAUS ("Defendant" or "Klaus") and files his Original Answer and would respectfully show as follows:

Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendant generally denies each and every, all and singular, the allegations contained within Plaintiff's Original Petition and demands strict proof thereon by a preponderance of the credible evidence in accordance with the Constitution and laws of the State of Texas.

WHEREFORE, PREMISES CONSIDERED, Defendant David Elton Klaus prays upon final trial and hearing hereof, Plaintiff recover nothing from Defendant and for such other such further relief, both general and special, to which Defendant may be justly entitled.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/ Christopher H. Avery  
Rodrigo "Diego" Garcia  
State Bar No. 00793778  
Email: [dgarcia@thompsoncoe.com](mailto:dgarcia@thompsoncoe.com)

Christopher H. Avery  
State Bar No. 24069321  
Email: [cavery@thompsoncoe.com](mailto:cavery@thompsoncoe.com)  
One Riverway, Suite 1400  
Houston, Texas 77056  
Telephone: (713) 403-8388  
Facsimile: (713) 403-8299

COUNSEL FOR DEFENDANTS

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Marc E. Gravely  
[mgravely@gplawfirm.com](mailto:mgravely@gplawfirm.com)  
Jonathan C. Lisenby  
[jlisenby@gplawfirm.com](mailto:jlisenby@gplawfirm.com)  
GRAVELY & PEARSON, LLP  
425 Soledad, Suite 600  
San Antonio, Texas 78205

/s/ Christopher H. Avery  
Christopher H. Avery